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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,490	11/17/2005	Dominique Petit	05-240	3577
34704 7590 02/12/2008 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER WOODALL, NICHOLAS W				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
02/12/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/527,490

**Applicant(s)**

PETIT, DOMINIQUE

**Examiner**

Nicholas Woodall

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/03/2007 has been entered.

### ***Drawings***

2. The drawings were received on 10/01/2007. These drawings are acceptable.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Publication 2003/0220643) in view of Commarmond (U.S. Patent 5,180,393).

Regarding claims 11 and 18, Ferree discloses a device comprising a support made from plastic and a second rod (Figure 6c of the reference). The second rod is formed of turns is partly embedded in the plastic support. Regarding claim 12, Ferree discloses a device wherein the support is substantially tubular or cylindrical in shape.

Regarding claim 13, Ferree discloses a device wherein the turns of the second rod form a helical spring having an axis substantially parallel with an axis of the support. Ferree fails to disclose a device further comprising a first rod positioned substantially coaxial (claim 14) within the turns of the second rod (claim 11), wherein the first rod has an outer diameter smaller than the inner diameter of the turns of the second rod (claim 15). Commarmond teaches a device comprising a first rod positioned substantially coaxial within the turns of a second rod, wherein the first rod has an outer diameter smaller than the inner diameter of the turns of the second rod in order to provide rigidity to the device during traction (column 2 lines 14-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Ferree further comprising a first rod positioned substantially coaxial within the turns of the second rod, wherein the first rod has an outer diameter smaller than the inner diameter of the turns of the second rod in view of Commarmond in order to provide rigidity to the device during traction.

5. Claims 16, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Publication 2003/0220643) in view of Commarmond (U.S. Patent 5,180,393) further in view of Howland (U.S. Publication 2002/0173791).

Regarding claims 16, 17, and 19, the combination of Ferree and Commarmond disclose the invention as claimed except for the device further comprising a substantially U-shaped stiffness element. Howland teaches a device further comprising a substantially U-Shaped stiffness element connected between at least two implantable connecting assemblies in order to prevent the at least two implantable connecting

assemblies from moving towards one another (page 2 paragraph 016). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Ferree modified by Commarmond further comprising a substantially U-shaped stiffness element connected between at least two implantable connecting assemblies in view of Howland in order to prevent the at least two implantable connecting assemblies from moving towards one another.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Publication 2003/0220643) in view of Commarmond (U.S. Patent 5,180,393) further in view of Howland (U.S. Publication 2002/0173791) as a second interpretation different from the one used above.

Regarding claim 20, the combination of Ferree and Commarmond disclose the invention as claimed except for the device further comprising at least one rigid linking element. Howland teaches a device further comprising at least one rigid linking element between at least two anchor screws in order to prevent the anchor screws from moving towards one another (page 2 paragraph 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Ferree modified by Commarmond further comprising at least one rigid linking element between at least two anchor screws in order to prevent the anchor screws from moving towards one another.

### ***Response to Arguments***

7. The applicant did not provide any arguments. The examiner replied to the applicant's arguments presented in the after final amendment in the advisory action.

***Conclusion***

8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/  
Examiner, Art Unit 3733

/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733